



**US Army Corps
of Engineers**

Honolulu District
Regulatory Branch (1145b)
Bldg 230
Honolulu, HI 96858

Public Notice

Date: 16 Nov 2001

Comments Due By: 16 December 2001

In reply, refer to 200100500

ESTABLISHMENT OF REGIONAL CONDITIONS FOR NATIONWIDE PERMITS

On August 15, 2001, the Honolulu Engineer District (HED) published a notice announcing the reissuance of the Nationwide Permits (NWP). NWPs are general permits which authorize discharges of dredge and fill material into waters of the U.S. for categories of activities which the Corps has determined will have minimal impacts on the aquatic environment, individually and cumulatively, when conducted in accordance with permit conditions.

In addition to the NWP general conditions, regional conditions can be added specific to the needs and/or requirements of a particular region or State. Regional conditions are an important mechanism to ensure that impacts to the aquatic environment authorized by NWPs are minimal, both individually and cumulatively. Regional conditions cannot be used to make the NWPs less restrictive.

Enclosed with this public notice are the proposed regional conditions currently under consideration. The HED is seeking comments on the proposed regional conditions and on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. In response to the comments received on regional conditions, an additional public notice announcing any additional proposed regional conditions will be published. These regional conditions will become effective upon approval by the Division Engineer and no sooner than February 11, 2002, when the final NWPs and conditions take effect. Unless otherwise noted, all proposed regional conditions listed in this notice are applicable for activities in the Honolulu Engineer District (State of Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands).

The Honolulu District has posted its draft Corps regional conditions for the NWPs on its Internet home page at <http://www.pod.usace.army.mil/news/newsrel.html>.

Interested parties who do not have a Internet access should contact Ms. Lolly Silva at (808)438-7023 for a copy of the proposed regional conditions.

This is a notice of the public's opportunity to comment on the proposed Corps regional conditions for the NWPs. Comments concerning the proposed regional conditions should be sent to the Honolulu Engineer District, Regulatory Branch, Building 230, Fort Shafter, Hawaii 96858-5440. Comments received will assist the Honolulu District Engineer in determining if such regional conditions are necessary and appropriate. Comments are due by December 16, 2001.

REGIONAL CONDITION 1 (Geographical Exclusions)

The following geographic areas and waters of the U.S. are excluded from coverage by the indicated NWPs.

1. Anchialine Pools and Montane Bogs (NWPs 7, 12, 14, 18, 39, 40, 41, and 42).
2. Designated Critical Resource Waters and adjacent wetlands (pursuant to General Condition 25), as well as American Heritage Rivers, National Wildlife Refuges, and State Marine Life Conservation Districts. However, a discharge may be authorized in National Wild and Scenic Rivers if the activity complies with General Condition 7 or in designated critical habitats for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or National Marine Fisheries Service, whichever agency has jurisdiction, has concurred in a determination of compliance with this condition (NWPs 7, 12, 14, 39, 40, and 42).
3. Kihei Wetlands - The area located on Maui between the Mokulele Hwy and Kilohana Drive, extending from the Piilani Highway to the ocean. (NWPs 7, 39, 40, 41, and 42).
4. State of Hawaii (NWP 43 and 44).
5. Commonwealth of the Northern Mariana Islands, Territory of Guam and Territory of American Samoa (NWPs 29, 39, 41, 42, 43, 44).

REGIONAL CONDITION 2 (Notification)

Notification to the District Engineer in accordance with General Condition 13 is required for all discharges of fill into the waters of the U.S. exceeding 1/20 acre under NWPs 3, 12, 14, 18, 27, 39, 40, 41, and 42.

Within the CNMI, Guam and American Samoa, notification to the District Engineer in accordance with General Condition 13 is required for all discharges into the waters of the United States (NWPs 12, 13, 14, 27, 28, 35, 36, 38, and 40). Notification is required for all other NWPs where the loss of waters of the United States for a single and complete project exceeds 1/20 acre.

REGIONAL CONDITION 3 (Acreage Limitation)

Maximum losses of waters of the U.S. under NWPs 7, 27, 40, 41, and 42 in Hawaii are limited to 1/3 acre. Maximum loss of waters of the U.S. under NWP 39 is limited to 1/4 acre. Maximum loss of waters of the U.S. in Guam, American Samoa, and the CNMI for a single and complete project is 1/10 acre (total impact of use of one or more NWP on the same project).

REGIONAL CONDITION 4 (Length Limitation)

The maximum length of fill crossing waters of the U.S. is limited to 200 linear feet under NWPs 12, 13, 14, 39 and 42.

REGIONAL CONDITION 5 (Bank Stabilization)

New rigid structures (ex: pre-cast concrete, concrete rubble masonry, or cast-in-place structures) are excluded from use as bank stabilization to protect restoration of storm-damaged uplands under NWP 3 for both tidal and non-tidal waters of the U.S.

REGIONAL CONDITION 6 (Sidecasting)

For NWPs 12 and 41, sidecast materials must be removed within 30 days of placement within waters of the U.S. Removal of the sidecast material may be phased in accordance with the progress of the work.

REGIONAL CONDITION 7 (Runways and Taxiways)

Runways and taxiways are excluded from NWP 14 authorization in tidal waters of the U.S.

REGIONAL CONDITION 8 (Stream Modification)

Permanent stream channelization and/or the construction of dams that impound waters of the U.S. may not be conducted under NWPs 7, 12, 14, 27, 39, 40, 41, and 42. This condition also applies to NW #18 within the CNMI, Guam and American Samoa.

REGIONAL CONDITION 9 (Compensatory Mitigation)

Upland vegetation buffers cannot be used to offset permanent losses of wetland and aquatic areas authorized under NWPs 12, 14, 39, 40, 42, 43 and 44; they cannot be used for this purpose under any of the NWPs within the CNMI, Guam and American Samoa. Use of vegetated upland buffers is strongly encouraged, however as part of a compensatory mitigation plan that replaces lost wetland and aquatic areas through restoration, enhancement, creation or under exceptional circumstances, preservation of wetland and aquatic areas at a minimum of a 1:1 ratio.

REGIONAL CONDITION 10 (Mitigation Measures)

A plan employing the techniques listed below shall be implemented to avoid or minimize disturbance to wetlands, riparian areas and beach fringes and/or to re-establish vegetation in such areas when disturbance cannot be avoided. Areas disturbed during project construction must be revegetated as soon as possible. Erosion protection shall be provided and remain in place until the soil is permanently stabilized.

- 1) Avoidance and minimization techniques may vary with site conditions and include, but are not limited to, the following:

- *Planning construction access and scheduling work to avoid or minimize damage to wetland vegetation.

- *Using crane matting or suitable geotextile material to protect vegetation from damage by heavy equipment.

- 2) Revegetation techniques may vary with site conditions and include, but are not limited to the following:

- *Seeding, planting, replacement of reserved ground cover, and/or fertilizing of re-contoured ground to promote re-establishment of natural plant communities. Species to be used for seeding and planting should follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state; 4) non-native non-invasive, species. Note: non-native species should be used only when native species are not available. The following species are known to be highly invasive and may not be used under any circumstances for revegetation under these NWPs: 1) species included on the USDA APHIS Plant Protection and Quarantine, Federal Noxious Weed List as of 6/7/99; 2) species included on the Hawaii Department of Agriculture, List of Plant Species Designated as Noxious Weeds for Eradication or Control Purposes; and, 3) the University of Hawaii, Department of Botany, Distribution Maps of Alien Plants in Hawaii.

REGIONAL CONDITION 11 (Site Identification)

Project limits of authorized sites shall be clearly identified in the field (e.g., by staking, flagging, silt fencing, buoys, existing footprint for maintenance activities, etc.) prior to clearing and construction to ensure that impacts to waters of the U.S. (including wetlands) beyond project footprints are avoided.

REGIONAL CONDITION 12 (Project Timing)

NWP activities must assure that suspended sediment and turbidity do not affect waters beyond the immediate work area. The work shall be conducted in the dry season or when any affected stream has minimal or no flow, to the extent practicable. The work shall be discontinued during flooding, intense rainfall, storm surge, or high surf conditions where runoff and turbidity cannot be controlled. Shoreline work will be done during low tides as much as possible. Silt fences, silt curtains, or other diversion or containment structures shall be installed to contain sediment and turbidity at the work site (a) parallel to and

within 10 feet of the toe of any fill, or soil exposed within 25 feet of a standing or flowing waterbody, if the fill site has a downslope or surface connection to the waterbody; and (b) adjacent to any fill placed or soil exposed within a standing or flowing waterbody. All silt fences, curtains, and other structures must be installed properly and maintained in a functioning manner for the life of the construction period where fill material and exposed soils might cause transport of sediment or turbidity beyond the immediate construction site.

REGIONAL CONDITION 13 (Definition of Coral Reefs)

For Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, coral reefs are defined as structures made of and by living coral and other animals and plants.